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In re Application of  
Schramm et al.

Application No.: 10/560,676  
PCT No.: PCT/US04/20902  
Int. Filing Date: 30 June 2004  
Priority Date: 02 July 2003  
Attorney Docket No.: 96700/1076  
For: SIR2 Regulation

DECISION  
ON  
PETITION

This is a decision on applicants' "Petition Under 37 CFR § 1.181 To Withdraw Holding Of Abandonment..." filed on 18 January 2007.

#### BACKGROUND

This international application was filed on 30 June 2004, claimed a priority date of 02 July 2003, and designated the United States. Consequently, the thirty month period for payment of the basic national fee in the United States expired as of midnight on 03 January 2006 (since 02 January 2006 was a holiday). On 14 December 2005, applicants filed *inter alia* the basic national fee.

On 21 March 2006, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of an executed oath or declaration of the inventors compliant with 37 CFR 1.497(a) and (b) and a surcharge under 37 CFR 1.492(h).

On 28 December 2006, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicants, indicating that this international application had become abandoned with respect to the national stage in the United States for failure to timely reply to the Notification of Missing Requirements mailed on 21 March 2006.

#### DISCUSSION

Petitioner states that "The Notification of Missing Requirements was never received by the undersigned attorney," and requests withdrawal of the holding of abandonment on that basis. As explained in MPEP 711.03(c), and following *Delgar v. Schuyler*, 172 USPQ 513 (D.D.C. 1971), an adequate showing of non-receipt of papers mailed to applicant by the Office must include (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket records must also be referenced in petitioner's statement).

Petitioner has satisfied requirements (1) and (2).

Concerning requirement (3), the instant petition is accompanied by sheets entitled "Incoming Daily Mail Log," and facially appearing to reflect correspondence received by counsel on various dates. However, the required docket records are those records showing all

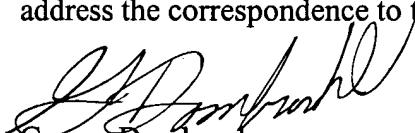
applications *docketed for responses* due on 22 May 2006 (since 21 May 2006 was a Sunday), rather than records showing counsel's mail intake (ideally, such records would include a "tickler sheet" listing all of the application or docket numbers with responses due on or around 22 May 2006). For this reason, the submitted docket sheets do not satisfy requirement (3).

### CONCLUSION

The petition to withdraw the holding of abandonment is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision (extendable under 37 CFR 1.136(a)). Any reconsideration request should include be entitled "Renewed Petition Under 37 CFR 1.181."

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the correspondence to the attention of the Office of PCT Legal Administration.



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